

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**H.C., Appellant**

**and**

**DEPARTMENT OF THE NAVY, PUGET  
SOUND NAVAL SHIPYARD, Bremerton, WA,  
Employer**

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**Docket No. 16-0740  
Issued: June 22, 2016**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 3, 2016 appellant filed a timely appeal from a February 5, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish hearing loss causally related to factors of his federal employment.

**FACTUAL HISTORY**

On October 19, 2015 appellant, then a 54-year-old shipfitter, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to 18 years of industrial

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

noise exposure in his federal employment. He first became aware of his condition and its relation to his federal employment on May 15, 2014.

In an October 23, 2015 letter, OWCP advised appellant that evidence was insufficient to establish his claim. It requested information such as: his federal and nonfederal employment history, his exposure to hazardous noise, and previous ear/hearing problems. By letter dated October 23, 2015, OWCP requested that the employing establishment submit information including the job sites where appellant worked, the sources of noise appellant was exposed to, the period of exposure, and the decibel and frequency of the exposure.

In a June 14, 2014 report, Dr. Lee Chu, Board-certified in family and geriatric medicine, advised that appellant reported a sudden change in hearing that included an echo, decreased hearing, and ringing in his right ear. He indicated that appellant underwent an audiology test at work the day prior which revealed asymmetrical decreased hearing in his right ear at low frequencies as well as chronic symmetrical bilateral high frequency hearing loss.

In a July 11, 2013 diagnostic report, Dr. Mark O'Callaghan, a Board-certified diagnostic radiologist, advised that appellant had a history of sensorineural hearing loss and Eustachian tube dysfunction. He noted that internal auditory canal (IAC) and a brain magnetic resonance imaging (MRI) scan revealed no evidence of acoustic schwannoma.

In a May 23, 2013 report, Dr. Chu noted that appellant had a sudden onset of vertigo at work while working overhead with his head extended. He noted that appellant had decreased hearing since the year prior and indicated that an MRI scan of the IAC was negative.

In a June 19, 2014 report, Dr. David Kessler, a Board-certified otolaryngologist, advised that appellant reported episodes of vertigo and nausea. He noted that his symptoms had been intermittent for the past few weeks with prodromal fullness of the right ear. Dr. Kessler indicated that appellant had a long history of sensorineural hearing loss and opined that he was possibly having a flare-up of an underlying chronic cochleovestibulopathy or a variation of Meniere's disease.

In an October 10, 2014 report, Dr. Kessler advised that appellant related that his hearing, vertigo, and tinnitus were stable. However, appellant was experiencing right ear fullness and disequilibrium. He assessed Meniere's disease and recommended that appellant continue with his diuretic therapy and occasional meclizine.

In a September 15, 2015 report, Dr. Mark Miller, Board-certified in internal medicine, advised that appellant had an onset of sudden right ear hearing loss in 2013 and was subsequently diagnosed with Meniere's disease. He noted that appellant was exposed to a high level of environmental noise including grinders and drills as a shipfitter. Dr. Miller indicated that audiometry revealed a moderate-to-profound sensorineural hearing loss from 3,000 to 8,000 hertz in the left ear and a severe flat sensorineural hearing loss across the board in the right ear.

In an October 16, 2015 report, Dr. Preston Rice, Board-certified in otolaryngology, advised that appellant related worsening hearing loss. He assessed Meniere's disease and indicated that appellant should consider hearing aids as his hearing loss had progressed.

In an October 27, 2015 statement in response to OWCP's questionnaire, appellant detailed his employment history. He noted that from July 1, 1980 until August 3, 1990 he was employed as an aviation boatswain's mate and aircraft handler with the U.S. Navy where he was exposed to jet blast noise. Appellant advised that from August 1990 through September 1990 he was employed by Global Company where he was exposed to needle gun noise. He indicated that from April 1997 until the present he was employed by the employing establishment where he was exposed to the noise of grinders, needle guns, carbon arcing, sawzalls, and other industrial noise.<sup>2</sup> Appellant advised that he used hearing protection.

In a November 25, 2015 statement, the employing establishment advised that from March 11, 1997 to the present appellant was exposed to 79 to 89 decibels of continuous background noise and 100 to 110 decibels of intermittent tool use noise.

OWCP prepared a statement of accepted facts (SOAF) and referred appellant to Dr. Gerald Randolph, Board-certified in otolaryngology, for a second opinion examination. In a January 12, 2016 report, Dr. Randolph reviewed appellant's history and a statement of accepted facts. He stated that a March 31, 1997 report revealed a bilateral high frequency sensorineural hearing loss compatible with hearing loss due to noise exposure before appellant's employment with the employing establishment. A workplace audiogram from May 25, 2011 continued to reveal a bilateral high frequency sensorineural hearing loss compatible with hearing loss due to noise exposure. Dr. Randolph noted that his hearing loss "may have increased somewhat in those frequencies affected by noise since his preemployment audiogram" although it was not ratable for schedule award purpose. He opined that appellant had bilateral noise-induced hearing loss, Meniere's disease mostly in the right ear, and sensorineural hearing loss secondary to Meniere's disease in the right ear.

In answering OWCP's questions, Dr. Randolph noted that appellant had nonratable preexisting bilateral high frequency sensorineural hearing loss prior to his employment with the employing establishment while a May 25, 2011 audiogram revealed somewhat increased hearing loss that also was not ratable. He opined that appellant's sensorineural hearing loss was not due to his federal employment. Dr. Randolph explained that "on a more-probable than not basis, the increase in appellant's ratable hearing loss was largely due to his Meniere's disease and in fact is unrelated to his shipyard employment." He explained that appellant's hearing loss in the frequencies affected by noise only slightly increased between the March 31, 1997 and May 25, 2011 audiograms, but his hearing loss significantly progressed following his onset of Meniere's disease. Dr. Randolph advised that appellant's hearing loss was in excess of that in both ears that would normally be predicted on the basis of presbycusis. He indicated that appellant's workplace exposure was of sufficient intensity and duration to have aggravated his preexisting hearing loss if inadequate ear protection was used. Dr. Randolph calculated that appellant had 5.625 percent ratable hearing loss in the left ear, 73.125 percent in the right ear, and 16.88 binaural hearing loss. He opined that appellant was a candidate for hearing aids, but advised that this was "most likely" due to Meniere's disease. An accompanying January 12, 2016 audiogram performed for Dr. Randolph tested decibel losses at 500, 1,000, 2,000, and 3,000 hertz and

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<sup>2</sup> Appellant advised that he was not exposed to hazardous noise in his nonfederal positions as an ordinary seaman and line handler at American Hawaii Cruises and Victoria Clipper Navigation.

recorded losses of 25, 20, 25, and 45 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 80, 70, 70, and 75.

By decision dated February 5, 2016, OWCP accepted appellant's exposure to noise but denied his occupational disease claim because medical evidence was insufficient to establish that his hearing loss was causally related to his federal employment.

On appeal appellant argues that his hearing loss was in part caused by his exposure to hazardous noise at the employing establishment. He contends that his Meniere's disease did not manifest until 2013 or 2014 but that audiograms from 2007 through 2012 show a constant deterioration in hearing from exposure to occupational noise. Appellant further argues that Dr. Randolph diagnosed noise-induced bilateral hearing loss.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>5</sup>

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup> The weight of medical evidence is determined by its reliability, its probative value, its

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<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>6</sup> *I.J.*, 59 ECAB 408 (2008); *supra* note 4.

convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### **ANALYSIS**

It is not disputed that appellant was exposed to work-related noise while working as a shipfitter with the employing establishment. In its February 5, 2016 decision, OWCP denied appellant's occupational disease claim finding that the medical evidence was insufficient to establish that his hearing loss was causally related to workplace noise exposure. The Board finds that this case is not in posture for decision.

In his January 12, 2016 report, Dr. Randolph assessed bilateral noise-induced hearing loss, Meniere's disease mostly in the right ear, and sensorineural hearing loss secondary to Meniere's disease. He opined that appellant's sensorineural hearing loss was not due to his federal civilian employment and that the increase in appellant's ratable hearing loss was "largely" due to his Meniere's disease. Dr. Randolph advised that appellant's hearing loss in the frequencies affected by noise only slightly increased between the March 31, 1997 and May 25, 2011 audiograms but that his hearing loss significantly progressed following the onset of his Meniere's disease. His finding that appellant's hearing loss was "largely" due to Meniere's disease while also acknowledging a slight increase in his hearing loss during his employment from 1997 to 2011 is contradictory. The Board notes that it is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship. An employee is not required to prove that occupational factors are the sole cause of his claimed condition. If work-related exposures caused, aggravated, or accelerated appellant's condition, it is compensable.<sup>8</sup> OWCP did not seek clarification from Dr. Randolph with regard to whether appellant's workplace noise exposure caused any aggravation of his condition. When it refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, OWCP should secure an appropriate report on the relevant issues.<sup>9</sup>

Therefore, the case will be remanded for OWCP to further develop the medical evidence with regard to whether appellant's work-related noise exposure caused or aggravated his claimed hearing loss. Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>7</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>8</sup> *See Beth P. Chaput*, 37 ECAB 158, 161 (1985); S.S., Docket No. 08-2386 (issued June 5, 2008).

<sup>9</sup> *See Ayanle A. Hashi*, 56 ECAB 234 (2004) (when OWCP refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, OWCP should secure an appropriate report on the relevant issues); *Mae Z. Hackett*, 34 ECAB 1421 (1983) (where OWCP referred appellant to a second opinion physician, it has the responsibility to obtain an evaluation which will resolve the issue involved in the case).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 5, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: June 22, 2016  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board